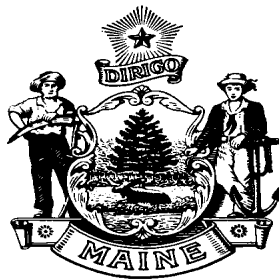


**REGULATIONS GOVERNING THE LICENSING
AND
FUNCTIONING
OF
ASSISTED HOUSING PROGRAMS**

Assisted Living Programs



Effective Date

September 1, 2003

**DEPARTMENT OF HUMAN SERVICES
BUREAU OF ELDER AND ADULT SERVICES**

ASSISTED LIVING LICENSING SERVICES

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ASSISTED LIVING PROGRAMS

1 PURPOSE

These rules establish minimum standards for the licensing of assisted living programs. Assisted living services is the provision by an assisted living program, either directly by the provider or indirectly through contracts with persons, entities or agencies, assistance with activities of daily living and instrumental activities of daily living, personal supervision, protection from environmental hazards, meals, diet care, care management and diversional or motivational activities. Assisted living programs must be consumer oriented and met professional standards of quality

2 DEFINITIONS

The following terms have the meanings as specified.

- 2.1** “**Abuse**” means the infliction of injury, unreasonable confinement, intimidation or cruel punishment with resulting physical harm or pain or mental anguish, sexual abuse or exploitation, or the willful deprivation of essential needs.
- 2.2** “**Activities of Daily Living (hereinafter ADLs)**” means tasks routinely performed by a person to maintain bodily functions, including bed mobility, transfers, locomotion, dressing, eating, toileting, bathing and personal hygiene.
- 2.3** “**Adult Day Services**” means the care and supervision of consumers who attend daytime or nighttime programs but do not live in the building.
- 2.4** “**Advance Directives**” means a document signed by the consumer, guardian or agent under durable power of attorney, giving or withholding consent or approval related to medical or other professional care, counsel, treatment or service for the consumer, in the event that the consumer becomes unable to provide that direction.
- 2.5** “**Aging in Place**” means a program of services that furthers the independence of the consumer and respects their privacy and personal choices, including the choice to continue to reside at home for so long as the assisted living program, as it is fundamentally designed, is able to meet their needs. Assisted living programs provided to consumers must be consumer oriented and meet professional standards of quality.
- 2.6** “**Alzheimer’s/Dementia Care Unit**” means a unit, building or distinct part of a building that provides care/services in a designated, separated area for consumers with Alzheimer’s disease or other dementia. The unit, building or distinct part provides specialized programs, services and activities, and is locked, segregated or secured to provide or limit access by consumers inside and outside the designated or separated area.
- 2.7** “**Applicant**” means the person who owns the building and is applying for a license, or the person who is applying for a license pursuant to a valid lease agreement, contract or other agreement with the owner of the building that delineates the roles and duties under these rules.

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- 2.8** “Assisted Living Program” means a program of assisted living services provided to consumers in private apartments in buildings that include a common dining area, either directly by the provider or indirectly through contracts with persons, entities or agencies. The types of assisted living programs governed by these regulations include:
- 2.8.1** Type I - an assisted living program that provides medication administration directly or indirectly through contracts with persons, entities or agencies.
- 2.8.2** Type II - an assisted living program that provides medication administration and nursing services directly or indirectly through contracts with persons, entities or agencies *as follows:*
- 2.8.2.1** Services of a Registered Professional Nurse; and/or
- 2.8.2.2** Registered Professional Nurse coordination and oversight of consumer services provided by unlicensed health care assistive personnel.
- 2.9** “**Assisted Living Services**” means the provision by an assisted living program, either directly by the provider or indirectly through contracts with persons, entities or agencies, of assisted living services defined as follows:
- 2.9.1** Personal supervision, meaning general awareness of a consumer’s general whereabouts, giving consideration to the nature of the living arrangement; and, observation and assessment of each consumer’s functioning or behavior to enhance his or her health or safety or the health or safety of others;
- 2.9.2** Protection from environmental hazards, meaning mitigation of risk in the physical environment to prevent unnecessary injury or accident;
- 2.9.3** Assistance with Activities of Daily Living and Instrumental Activities of Daily Living;
- 2.9.4** Diversional, motivational or recreational activities, meaning activities that respond to consumers’ interests or which stimulate social interaction, both in individual and group settings;
- 2.9.5** Dietary services, meaning the provision of regular and therapeutic diets that meet each consumer’s minimum daily food requirements, based on the number of meals served, as defined by the Recommended Dietary Allowances of the Food and Nutrition Board of the National Research Council, National Academy of Sciences;
- 2.9.6** Care Management Services, meaning a process of working with a consumer to identify his/her needs and strengths, developing a service plan and arranging for and monitoring service delivery;
- 2.9.7** **Administration of medications**, meaning services such as reading labels for consumers, observing consumers taking their medications, checking the dosage, removing the prescribed dosage, filling a syringe and administering insulin and bee

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sting kits (when permitted) and the maintenance of a medication record for each consumer;

- 2.9.8** **Nursing services**, meaning services provided by professional nurses licensed pursuant to Title 32, section 2102, subsection 2. It includes coordination and oversight of consumer care services provided by unlicensed health care assistive personnel in assisted living programs.
- 2.10** **“Certified Nursing Assistant (CNA)”** means a person who has successfully completed a training program or course with a curriculum prescribed by the Maine State Board of Nursing or is deemed to have had comparable training according to regulations established by the Maine State Board of Nursing, and whose duties are assigned by a registered professional nurse, and who is currently listed on the Maine Registry of Certified Nursing Assistants.
- 2.11** **“Certified Nursing Assistant/Medications (CNA/M)”** means a Certified Nursing Assistant who has satisfactorily completed the standardized medication course for Certified Nursing Assistants, the curriculum for which is prescribed by the Maine State Board of Nursing.
- 2.12** **“Consumer”** means any person eighteen (18) years of age or older, who is not related by blood or marriage to the owner or person in charge of the assisted living provider or building in which the consumer lives and who receives assisted housing services. Any person seventeen (17) years of age, with written permission from the Department, may be a consumer. The Statutory term “resident” has the same meaning as consumer.
- 2.13** **“Consumer’s Service Plan”** means a written service plan developed with a consumer, based upon an assessment of the consumer’s needs and abilities and including (as appropriate) habilitative or rehabilitative goals and objectives, program goals and objectives and the resources and methods necessary to implement the plan.
- 2.14** **“Deficiency”** means a violation of State licensing regulations.
- 2.15** **“Dementia”** means an acquired loss of intellectual functioning (primarily abstract thinking, memory, and judgment) of sufficient severity to interfere with a person’s ability to act independently and perform routine daily activities. Symptoms of dementia can include memory loss and the loss or diminution of other cognitive abilities, such as learning ability, judgment, comprehension, attention and orientation to time and place and to oneself. Dementia is not a disease in and of itself but rather a group of symptoms that accompanies certain diseases and conditions. Dementia can be caused by such diseases as Alzheimer’s Disease, Pick’s Disease, Amyotrophic Lateral Sclerosis (ALS), Parkinson’s Disease, Huntington’s Disease, Creutzfeldt-Jakob Disease, multi-infarct dementia, etc.
- 2.16** **“Department”** means the Maine Department of Human Services.
- 2.17** **“Directed Plan of Correction”** means a Plan of Correction issued by the Department which directs how and when to correct cited deficiencies.
- 2.18** **“Distinct Part”** means a physically separate unit that is clearly identifiable from the remainder of the building. Various apartments or beds scattered throughout the building would not comprise a “distinct

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part”. The “distinct part” of a building provides a level of service distinguishable from other levels of care in the building.

- 2.19** “**Duly Authorized Licensed Practitioner**” means an individual currently licensed in the State of Maine as a physician, physician’s assistant or nurse practitioner.
- 2.20** “**Emergency**” means either those events that demonstrate that a consumer has an urgent medical or psychological need that requires immediate acute care treatment, poses imminent danger to other consumers , a natural disaster which damages or interrupts vital services to consumers or the integrity of the physical plant.
- 2.21** “**Exploitation**” means the illegal or improper use of an incapacitated or dependent adult or his/her resources for another’s profit or advantage.
- 2.22** “**Failure to Make Timely Correction of Any Deficiency**” means that a provider has not remedied a deficiency within the time frame established in a Plan of Correction or Directed Plan of Correction, or, if any extension has been granted by the Department, within the time frame of that extension.
- 2.23** “**False Information**” means any written or verbal statement or representation of fact that is not true and that was made intentionally, knowingly or without having taken reasonable steps to ascertain whether or not the information was true.
- 2.24** “**Food Preparation Area**” means an area for storing and preparing food in an individual’s apartment. This area must include, as a minimum, six (6) square feet of clear countertop, a small refrigerator, bar-type sink, a cabinet for food storage and either two stovetop burners or a microwave oven.
- 2.25** “**Functional Assessment**” means a comprehensive evaluation of an individual’s health, social, environmental, financial and family or community supports, which will determine the strengths and needs of the individual.
- 2.26** “**Impede or Interfere with the Enforcement of Regulations**” means a failure to provide information to the Department that is necessary to determine compliance with licensure regulations or a failure to allow the Department access to an Assisted Housing Program or any part thereof.
- 2.27** “**Instrumental Activities of Daily Living (hereinafter IADLs)**” includes, but is not limited to, preparing or receiving of a main meal, taking medication, using the telephone, handling finances, banking, shopping, routine housework, laundry and getting to appointments.
- 2.28** “**Legal Representative**” means a guardian, conservator, agent under durable power of attorney, representative payee, or other person authorized by law, whose authority extends to the matter under consideration and who has provided the assisted living provider with documentation of their legal authority.
- 2.29** “**Licensee**” means the person to whom a license is issued.

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- 2.30** “**Licensed Health Care Professional**” means health care providers, including physicians, registered professional nurses, licensed practical nurses, physician assistants, nurse practitioners, occupational therapists, speech pathologists, physical therapists, dietitians and social workers who have been authorized to practice a health care profession in accordance with Maine State law.
- 2.31** “**Medication Error**” means the administration of any medication incorrectly, e.g., dosage, selection of drug, selection of consumer, time or method of administration, omission of prescribed medication, error in documentation or the administration of a medication without a valid order.
- 2.32** “**Neglect**” means a threat to an adult’s health or welfare by physical or mental injury or impairment, deprivation of essential needs or lack of protection from these threats.
- 2.33** “**Person**” means any individual, owner, corporation, partnership, association, governmental subdivision or any other entity.
- 2.34** “**Pharmacist**” means an individual currently licensed as a registered professional pharmacist in the State of Maine.
- 2.35** “**Physician**” means an individual currently licensed to practice medicine or osteopathy in the State of Maine.
- 2.36** “**Plan of Correction (hereinafter POC)**” means a section of the Statement of Deficiencies completed by the provider, detailing the plan to correct deficiencies and the completion dates.
- 2.37** “**Private Apartment**” means a private dwelling unit with an individual bathroom, bedroom and a food preparation area.
- 2.38** “**Provider**” means the licensee.
- 2.39** “**Psychotropic Medications**” means antipsychotic agents, major tranquilizers, antidepressant agents, anxiolytic agents and hypnotic agents.
- 2.40** “**Qualified Consultant Dietitian**” means an individual who is currently licensed to practice dietetics in the State of Maine.
- 2.41** “**Qualified Interpreter**” means an interpreter who is able to interpret effectively, accurately and impartially, both receptively and expressively, using any necessary specialized vocabulary.
- 2.42** “**Registered Nurse**” or “**Registered Professional Nurse (hereinafter RN)**” means an individual who is currently licensed by the Maine State Board of Nursing to practice professional nursing.
- 2.43** “**Related by Blood or Marriage**” means spouses, parents, children, grandparents, grandchildren, great-grandparents, great-grandchildren, brothers, sisters, aunts, uncles, nephews, nieces, and step-relations.
- 2.44** “**Repeated Deficiency**” means a violation of a rule more than once in a two (2) year period.

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- 2.45** “**Resident**” means any person eighteen (18) years of age or older, who is not related by blood or marriage to the owner or person in charge of the assisted living provider or building in which the resident lives and who receives assisted housing services. Any person seventeen (17) years of age, with written permission from the Department, may be a resident. The Statutory term “resident” has the same meaning as consumer
- 2.46** “**Consumer Rights**” means those rights enumerated in Title 22 M.R.S.A. § 7921 et. seq., and 22 MRSA § 7853(6), which apply to, assisted living programs, and also they’re enumerated in Section 5 of these regulations.
- 2.47** “**Restraints**” means any device or other means, except mechanical supports used in normative situations to achieve proper body position and balance:
- 2.47.1** Which is intended to restrict freedom of movement or access to one’s body; or
- 2.47.2** Any medication which alters cognition or behavior and which is used for discipline or convenience and is not required to treat medical symptoms.
- 2.48** “**Self-Administration of Medication**” means a consumer takes his/her own medication(s) independent of a staff person preparing the medication for the individual.
- 2.49** “**Shared Staffing**” as defined in 22 MRSA Section 7860 means the use of licensed and unlicensed personnel who are employed, directly or under contract, by a long term care facility in more than one level of care provided by a single entity on the same premises.
- 2.50** “**Statement of Deficiencies (hereinafter SOD)**” means a document issued by the Department which describes deficiencies in complying with these regulations.
- 2.51** “**Submit**” means to deposit in the US mail, hand deliver, fax submission and electronic submission to the Department.
- 2.52** “**Tenancy Obligation**” means a house rule that does not conflict with these regulations, which is established by the licensee and included in the contract, that all consumers must adhere to in order to continue their residence.
- 2.53** “**Unlicensed Health Care Assistive Personnel**” means individuals who provide assisted living services and who are not licensed as medical or health professionals.
- 2.54** “**Working Days**” means weekdays. Legal holidays (when state offices are closed), Saturdays and Sundays are not working days.

3 LICENSING

- 3.1 Responsibility for compliance.** The applicant/licensee shall comply with these regulations.

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- 3.2 Unlicensed facilities.** No person shall operate an assisted living program without a license, unless otherwise authorized by law.
- 3.3 Person license issued to.** The license is only valid for the named licensee(s).
- 3.4 Application and licensure.**
- 3.4.1 Application required.** The applicant is required to submit a written application for a license on a form approved by the Department. A license must be issued prior to the commencement of operation, or the applicant may be subject to sanctions. Incomplete applications, on which no action has been taken by the applicant after sixty (60) calendar days, shall be void.
- 3.4.2** A non-refundable licensing fee of \$200 shall be submitted with the application for each assisted living program. The check shall be made payable to the Treasurer, State of Maine.
- 3.4.3** Annually thereafter a licensee fee of \$200 is required
- 3.4.4 Admission and scope of services policy.** Assisted Living Programs are required to provide the Department with a written admission policy at the time of application for a license. The policy shall describe who may be admitted and scope of services provided, including scope of Nursing Services, consistent with applicable state and federal law.
- 3.4.5 Additional licensing requirements.** Prior to the issuance of a license and prior to re-licensure, the assisted living program shall:
- 3.4.5.1** Be certified to be in compliance with the National Fire Protection Association (NFPA) Life Safety Code. Assisted living programs must be inspected using the section of the Life Safety Code that applies to new apartment buildings and must be protected throughout by a supervised, automatic sprinkler system approved by the Commissioner of Public Safety.
- 3.4.5.2** Comply with all applicable laws and regulations promulgated there under, relating to fire safety, plumbing, water supply, sewage disposal and maintenance of sanitary conditions (Class I, II, III).
- 3.4.5.3** Comply with all other applicable laws and regulations pertaining to licensing.
- 3.5 Requirement for bond.** The applicant shall furnish evidence of a bond covering the applicant and any employee or agent of the applicant who manages, holds or otherwise is entrusted with consumer funds in an amount sufficient to replace those funds in the event of loss.
- 3.6 Limitations on serving as legal representative.** No licensee, owner, proprietor, administrator, employee or a person with a substantial financial interest in the assisted living program may serve as guardian, conservator or power of attorney of any consumer, but may be a representative payee or manager of personal funds.

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- 3.7 Issuance of license.** A new applicant will be notified by the Department within two (2) weeks of filing an application whether the application is complete. The Department and the Department of Public Safety are required to provide a new applicant necessary services and inspections within ninety (90) days of the filing of the completed application and the date the building is ready for inspection. The license shall specify the name of the applicant, the name of the program, the type of program, the name of the administrator, the address of the premises where the program is located, the maximum number of units, the type of license, and the expiration date of the license.
- 3.8 Default licensing.** If a new applicant has filed a completed application and has a building ready for inspection, has not been provided the necessary notifications, inspections or services from the Department and the Department of Public Safety, and a period of more than ninety (90) days has elapsed since notification that the application is complete, a provisional license will be issued. All required application materials must be submitted for the application to be considered complete. The Department shall notify a new applicant within two (2) weeks of filing of the application on whether the application is complete. If initial services and inspections are completed within the ninety (90) day time period, an initial license will be issued and no default licensing will occur.
- 3.9 Number of licenses required.** When more than one type of facility or program is provided, the Department may consider the following criteria in determining the number of licenses required:
- 3.9.1** The physical location;
 - 3.9.2** The structure or management and ownership;
 - 3.9.3** If providing more than one licensed level of care, the physically distinct part of the building designated for the assisted living program; and
 - 3.9.4** The administrative and regulatory burdens and benefits of granting a given number of licenses.
- The Department will specify the number of apartments, as appropriate, for each level of care. The provider shall not exceed licensed capacity.
- 3.10 Adult day services programs.** When an adult day services program is physically located in an assisted living program, separate licenses shall not be required. The adult day services programs shall comply with the *Regulations Governing the Licensing and Functioning of Adult Day Services Programs* and licensed capacity will be reflected on the assisted living program license.
- 3.11 Multilevel facility license.** For multilevel facilities, a single license will be issued by the Department, identifying each level of service. Multilevel facilities are assisted living programs that are located on the same contiguous grounds with licensed nursing facilities; adult day services programs or home health agencies. Multilevel facilities, when subject to licensing action or other sanctions, may have one or more of its levels sanctioned, and the Department will specify the particular levels in writing.
- 3.12 Provisional license.** The Department shall issue a provisional license, for a minimum period of three (3) months or longer as deemed necessary by the Department but not to exceed twelve (12) consecutive months, to an applicant who:

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- 3.12.1** Has not previously operated the program for which the application is made or is licensed and has not operated the program during the term of that license;
- 3.12.2** Complies with all applicable laws and regulations, except those which can only be complied with once consumers are served by the applicant; and
- 3.12.3** Demonstrates the ability to comply with all applicable laws and regulations by the end of the Provisional license term; or
- 3.12.4** Meets the criteria for default licensing.
- 3.13** **Conditional license.** The Department may issue a conditional license when the licensee fails to comply with applicable laws and regulations and, in the judgment of the Commissioner of the Department of Human Services, the best interest of the public would be so served by issuing a conditional license. The conditional license shall specify when and what corrections must be made during the term of the conditional license. A conditional license may be issued for up to a twelve (12) month period.
- 3.14** **Transfer of licenses.** No license may be transferred or applicable to any location or persons other than those specified on the license. When an assisted living program is sold or otherwise transferred to another provider, the new provider must apply for and obtain a license and pay a licensing fee prior to operating the program.
- 3.15** **Term of license.** A license may be valid for two (2) years, as long as the Department has determined the assisted living program is in substantial compliance with licensing rules and has no history of health or safety violations. Prior to the expiration of the license, the Department shall inspect for continued compliance with applicable laws and regulations as often as deemed necessary by the Department. In facilities/programs licensed for more than one level of care, the term of the license will be the term permitted for the highest level of care. For purposes of this section, the following terms have the following meanings:
- 3.15.1** “Substantial compliance” means there were no Class I or II violations that would threaten the health or safety of consumers.
- 3.15.2** “No history of health or safety violations” means that within the preceding two (2) years, the applicant was in substantial compliance with the rules.
- 3.16** **Reapplications.** Whenever a licensee has made timely and sufficient application for renewal of a license, the existing license shall not expire until the application has been finally determined by the Department.
- 3.17** **Posting the license.** The licensee shall post the license where it can be seen and reviewed by the public.
- 3.18** **Right of entry.** The Department’s authorized representatives, authorized representatives of the Maine Attorney General’s Office and authorized representatives of the Long Term Care Ombudsman Program shall have the right to enter upon and into any licensed facility/program at

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any time, in order to determine the state of compliance with applicable laws and regulations contained herein. To inspect any facility, which the Department knows or believes, is operated without a license, the department may enter only with the permission of the owner or person in charge or with a search warrant from the District Court authorizing entry and inspection. Any application for an Assisted Living Program license shall constitute permission for entry and inspection to verify compliance with applicable law and rules.

- 3.19 Filing Plans of Correction.** Whenever the Department issues an SOD, the applicant/licensee shall submit a specific POC within ten (10) working days of the date the applicant/licensee received the SOD.
- 3.20 Reapplication subsequent to licensing actions.** Subsequent to any of the following actions, a full annual or biennial license will not be issued until the deficiencies identified by the Department have been corrected:
- 3.20.1** Issuance of a conditional license;
 - 3.20.2** Refusal to issue or renew a license;
 - 3.20.3** Revocation or suspension of a license; or
 - 3.20.4** Refusal to issue a provisional license.
- 3.21 Renewal.** A renewal application must be received by the Department thirty (30) days prior to the license expiration date. Regardless of the term of the license, the licensee must pay a license fee annually. Prior to acting on the application for renewal the Department may:
- 3.21.1** Verify any information in the renewal application and conduct an inspection of the program;
 - 3.21.2** Issue an SOD, as appropriate. If cited deficiencies are not corrected within the established time frame, the Department may deny the renewal application, impose a fine, issue a Directed POC, and/or impose a conditional license.
- 3.22 Actions requiring prior written approval.** When an alteration of the common dining room and public bathrooms are proposed, consumers may not use these areas until the Department has determined that the changes comply with these regulations and issues a written approval to proceed.
- 3.23 Waivers.** The Department may waive or modify any provision(s) of these regulations as long as the provision is not mandated by state or federal law and does not violate consumer rights described in Section 5 of these regulations. The applicant/licensee shall indicate, in writing, what alternative method will comply with the intent of the regulation for which the waiver is sought. If approved, the waiver may be time limited.
- 3.24 Informal review of waiver denial.** The applicant/licensee may appeal a decision of the Department to deny a waiver request by submitting a written request for an informal review by the Department, or its designee, within ten (10) working days of the date of receipt of the denial. The applicant/licensee shall state in the written request, the grounds for the appeal. Should the

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applicant/licensee disagree with the informal review decision, an administrative hearing (pursuant to the Maine Administrative Procedure Act) may be requested within ten (10) working days of the date of notice or receipt of the informal review decision by writing to the Department. See also Section 4.10 of these regulations.

3.25 Rates and contracts.

3.25.1 Rates. Assisted living programs shall list all standard charges and make them available to the public.

3.25.2 Signing a contract. Each provider and each consumer or someone authorized to act in the consumer's behalf, shall sign a contract upon admission, or within sixty (60) calendar days of the effective date of these regulations. . The consumer and/or consumer's legal representative shall be given an original of the signed contract and the provider shall keep a duplicate in the consumer's file. No one other than the consumer shall incur any responsibility for the consumer's obligations by signing the contract for admission of the consumer. Financial responsibility for the consumer's expenses can only be assumed according to Section 3.25.3.7.

3.25.3 Provisions of contract. The contract shall contain provisions regarding services and accommodations to be provided and the rates and charges for such and any other related charges not covered by the program's basic rate. Each contract is subject to the following requirements:

3.25.3.1 No contract may contain a provision for the discharge of a consumer which is inconsistent with state law or rule.

3.25.3.2 No contract may contain a provision that may require or imply a lesser standard of care or responsibility than is required by law or rule.

3.25.3.3 Each contract shall provide for at least thirty (30) calendar days' notice prior to any changes in rates, responsibilities, services to be provided or any other items included in the contract.

3.25.3.4 No contract or agreement will require a deposit or other prepayment, except one month's rent in an assisted living program which may be used as a security deposit. The contract must state the explicit return policy of the program with regard to the security deposit.

3.25.3.5 No contract may contain a provision which provides for the payment of attorney fees or any other cost of collecting payments from the consumer.

3.25.3.6 The following shall be appended to the contract and made a part thereof:

3.25.3.6.1 Grievance procedure;

3.25.3.6.2 Tenancy obligations, if they exist;

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- 3.25.3.6.3 Consumer rights; and
 - 3.25.3.6.4 Copy of the admissions policy.
 - 3.25.3.7 The contract signed for admission of the consumer may not require or encourage anyone other than the consumer to obligate himself/herself for the payment of the consumer's expenses. If anyone other than the consumer informs the assisted living program that he/she wishes to guarantee payment of the consumer's expenses, he/she can do so only in a **separate written agreement**. No provision in the separate written agreement can conflict with these rules. This **separate agreement** must be provided to the guarantor of payment and must plainly state the following:
 - 3.25.3.7.1 Do not sign this agreement unless you voluntarily agree to be financially liable for paying the consumer's expenses with your own money.
 - 3.25.3.7.2 You may change your mind within forty-eight (48) hours of signing this agreement by notifying the assisted living program that you wish to revoke this agreement.
 - 3.25.3.7.3 You may call the Long Term Care Ombudsman Program for an explanation of your rights.
- 3.26 **Information to consumers.** The licensee must provide an information packet that includes the following information to the consumer and/or consumer's legal representative at the time of admission or within sixty (60) calendar days of the effective date of these regulations for all current consumers who have not already been given this information:
 - 3.26.1 Advance Directives information;
 - 3.26.2 Information regarding the type of assisted living program and the licensing status;
 - 3.26.3 The Maine Long Term Care Ombudsman Program brochure;
 - 3.26.4 Toll free telephone numbers for the Office of Advocacy of the Department of Behavioral and Developmental Services (BDS) if the program has consumers who receive services from BDS, Adult Protective Services, Assisted Living Licensing Services and Division of Licensing and Certification; and
 - 3.26.5 The process and criteria for placement in, or transfer or discharge from, the assisted living program; and
 - 3.26.6 The assisted living program's staff qualifications.
- 3.27 **Information for residents of Alzheimer's/dementia units.** When a provider operates a unit meeting the requirements of a Designated Alzheimer's/Dementia Care Unit as all or part of its program,

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consumer's and family members, or any other authorized representative must be provided the following information:

- 3.27.1** A written statement of philosophy;
 - 3.27.2** The process used for consumer assessment and establishment of a consumer services plan and its implementation;
 - 3.27.3** Those physical environment and design features that support the functioning of adults with cognitive impairments;
 - 3.27.4** The frequency and types of group and individual activities provided by the program;
 - 3.27.5** A description of family involvement and the availability of family support programs;
 - 3.27.6** A description of security measures provided;
 - 3.27.7** A description of in-service training provided for staff; and
 - 3.27.8** Policies with criteria and procedures for admission and discharge of consumers to and from the program/unit.
- 3.28 Refunds.** Refunds are to be managed as follows:
- 3.28.1** If a consumer dies or is discharged, the provider shall issue a refund to the consumer, the consumer's legal representative or the consumer's estate for any advance payments on a pro-rated basis. The refund will be calculated from the time the unit is surrendered to the licensee or 15 days from the date of written notice (in a non-emergency situation), whichever is later.
 - 3.28.2** Refunds shall be made within thirty (30) calendar days of date of discharge/death.
 - 3.28.3** If a consumer is determined to be retroactively eligible for third party payment, upon payment from a third party payer, the provider must repay the family or other payer any payments made for the period covered by third party payment.
- 3.29 Use of personal funds by operator.** Under no circumstances shall any operator or agent of an assisted living program use the personal funds of any consumer for the operating costs of the assisted living program or for items that are part of the contractual payment. The personal funds of any consumer shall not be commingled with the business funds of the assisted living program or with the personal funds or accounts of the owner, any member of the owner's family or any employee of the assisted living program. No operator or agent of the assisted living program shall borrow money from any consumer. *(Class IV)*
- 3.30 Tenancy obligation.** Tenancy obligations, if they exist in the assisted living program, must not conflict with these regulations and are subject to Section 5.26 of these regulations.

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3.31 Administrative and consumer records.

- 3.31.1 Confidentiality.** All administrative and consumer records shall be stored in such a manner that unauthorized persons cannot gain access to them.
- 3.31.2 Location of records.** All consumer records, consumer finances, admission/discharge records and census logs shall be readily accessible to the Department even in the event of a change of ownership or administration, unless this is done pursuant to a court order or to Section 5.12 of these regulations. Other administrative records, including personnel records, shall be made available with reasonable notice by the Department. All records shall be maintained in a format that is readily accessible and available to all appropriate staff.
- 3.31.3 Inspection of records.** All reports and records shall be made available for inspection upon request by the Department, the Long Term Care Ombudsman Program or the Maine Attorney General's Office without the consent of the consumer or his/her legal representative.
- 3.31.4 Record retention.** All administrative and consumer records shall be maintained in an accessible format for at least seven (7) years after the date of death or last discharge of the consumer.
- 3.31.5 Storage of records.** Provisions shall be made for the safe storage of all records required by these regulations.
- 3.31.6 Disaster plan.** Each assisted living program shall develop a comprehensive disaster plan. This plan shall include the following:
- 3.31.6.1** Contingencies for loss of power, heat, lights, water and/or sewage disposal;
 - 3.31.6.2** Contingencies for short term and long term emergencies; and
 - 3.31.6.3** If an assisted living program has no back up power source that can be used to continue operation of heat, lights, water and sewage disposal, the plan shall include contingencies for evacuation that include contractual arrangements with other agencies or facilities for temporary living accommodations.

4 ENFORCEMENT PROCEDURES

- 4.1 Inspections required.** The provider shall submit to regular and unannounced inspection surveys and complaint investigations in order to receive and/or maintain a license. The provider shall give access to all records required by these regulations. The Department has the right to interview consumers and employees in private. *[Class I]*
- 4.2 Frequency and type of inspections.** An inspection may occur:
- 4.2.1** Prior to the issuance of a license;

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- 4.2.2** Prior to renewal of a license;
 - 4.2.3** Upon complaint that there has been an alleged violation of licensing regulations;
 - 4.2.4** When there has been a change or proposed change in administrator, physical plant or services;
 - 4.2.5** When necessary to determine compliance with a Directed Plan of Correction, conditions placed on a license or that cited deficiencies have been corrected;
 - 4.2.6** For routine monitoring of services; or
 - 4.2.7** Any time the Department has probable cause to believe that an assisted living program has violated a provision of these regulations or is operating without a license.
- 4.3** **Licensing records kept by the Department.** The Department will maintain a complete record of all licensing activities related to the assisted living program. Those sections of the files not made confidential by law are available for public inspection at any time during normal business hours.
- 4.4** **Complaints.** The Department will accept complaints from any person about alleged violation(s) of licensing regulations. The provider shall not retaliate against any consumer or his/her representative for filing a complaint. Complainants have immunity from civil or criminal liability when the complaint is made in good faith. Any licensing violations noted as a result of a complaint investigation will be provided to the assisted living program in writing.
- 4.5** **Enforcement process.**
 - 4.5.1** After inspection, an SOD will be sent to the licensee if the inspection identifies any failure to comply with licensing regulations. An SOD may be accompanied by a Directed POC.
 - 4.5.2** The licensee shall complete a POC for each deficiency, sign the plan and submit it to the Department within ten (10) working days of receipt of any SOD.
 - 4.5.3** Failure to correct any deficiency (ies) or to file an acceptable POC with the Department may lead to the imposition of sanctions or penalties as described in Sections 4.7 and 4.8 of these regulations.
 - 4.5.4** **Informal conference.** If a licensee disagrees with the imposition or amount of any penalty assessed by the Department, the licensee must submit a written notification to the Department stating the nature of the disagreement, within ten (10) working days of receipt of an Assessment of Penalties. Upon receipt of this request, the Director of Assisted Living Licensing Services or his/her designee shall schedule an informal conference for the purpose of trying to resolve the dispute. The Director or his/her designee shall inform the licensee of the results of the informal conference in writing. If a provider desires to appeal the result of an affirmed or modified assessment of penalties following an informal conference, a written request for an administrative hearing, pursuant to Section 4.10, must be made. The Department will stay the collection of any fiscal penalties until final action

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is taken on an appeal. Penalties shall accrue with interest for each day until final resolution and implementation.

- 4.6 Grounds for intermediate sanctions.** The following circumstances shall be grounds for the imposition of intermediate sanctions:

- 4.6.1** Operation of an assisted living program without a license;
- 4.6.2** Operation of an assisted living program over licensed capacity;
- 4.6.3** Impeding or interfering with the enforcement of laws or regulations governing the licensing of assisted living programs, or giving false information in connection with the enforcement of such laws and regulations;
- 4.6.4** Failure to submit a POC within ten (10) working days after receipt of an SOD;
- 4.6.5** Failure to take timely corrective action in accordance with a POC, a Directed POC or Conditional License;
- 4.6.6** Failure to comply with state licensing laws or regulations that have been classified as Class I, II, III or IV pursuant to Sections 4.8.2 & 4.8.3.

- 4.7 Intermediate sanctions.** The Department is authorized to impose one or more of the following intermediate sanctions when any of the circumstances listed in Section 4.6 are present and the Department determines that a sanction is necessary and appropriate to ensure compliance with State licensing regulations to protect the consumers of an assisted living program or the general public:

- 4.7.1** The assisted living program may be directed to stop all new admissions, regardless of payment source, or to admit only those consumers the Department approves, until such time as it determines that corrective action has been taken.
- 4.7.2** The Department may issue a Directed POC or Conditional License.
- 4.7.3** The Department may impose a financial penalty.

- 4.8 Financial penalties.**

- 4.8.1** Certain provisions of these regulations have been classified as noted below. Financial penalties may be imposed only when these regulations are violated.
- 4.8.2** Certain provisions of the regulations have a single classification. Such regulations are followed by a notation (i.e., "Class I"). Classifications have been established according to the following standards:
 - 4.8.2.1** Class I - Any failure to comply with a regulation where that failure poses an immediate threat of death to a consumer(s).
 - 4.8.2.2** Class II - Any failure to comply with a regulation where that failure poses a substantial probability of serious mental or physical harm to a consumer(s).

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- 4.8.2.3** Class III - The occurrence of a repeated deficiency that poses a substantial risk to the health or safety of a consumer(s).
- 4.8.2.4** Class IV - The occurrence of a repeated deficiency that infringes upon consumer rights.
- 4.8.3** Certain regulations have been given alternative classifications. Such regulations are followed by an alternative notation (i.e., Class I/II or Class II/III). When these regulations are not complied with, the Department will determine which classification is appropriate, on a case-by-case basis, by reference to the standards set forth in Section 4.8.2.
- 4.8.4** If the Department assesses financial penalties, an Assessment of Penalties will be issued. The Assessment shall describe the classification of each violation found to have been committed by the assisted living program, the regulation or law that has been violated and the scheduled amount of time corresponding to that violation. If the provider does not contest the imposition or amount of the penalty, the provider must pay within thirty (30) calendar days of receipt of the Assessment of Penalties. If the provider disagrees with the imposition or amount of the penalty, the provider must notify the Department, in writing, stating the nature of the disagreement, within ten (10) working days of receipt of the Assessment of Penalties. The Department will schedule an informal conference to resolve the dispute and a written decision based upon this conference will be provided. If the provider is still dissatisfied with the written decision, an administrative hearing may be requested in accordance with Section 4.10.
- 4.8.5** The amount of any penalty to be imposed shall be calculated according to the following classification system:
- | | | |
|----------------|---|---|
| 4.8.5.1 | Any failure to comply with regulations classified as Class I, pursuant to Section 4.8.2.1;
Operation of an assisted living program or residential care facility over licensed capacity, or

Impeding, interfering or giving false information in connection with the enforcement of laws or regulations governing licensure. | \$6.00 per
consumer per
occurrence
per day |
| 4.8.5.2 | Any failure to comply with regulations classified as Class II, pursuant to Section 4.8.2.2;
Failure to submit a POC within ten (10) working day's after receipt of an SOD; or
Failure to take timely corrective action in accordance with a POC, Directed POC or conditional license. | \$5.00 per
consumer per
occurrence
per day |
| 4.8.5.3 | The occurrence of a repeated deficiency in complying with regulations classified as Class III, pursuant to Section 4.8.2.3;
The occurrence of a repeated deficiency in complying with regulations classified as Class IV, pursuant to Section 4.8.2.4. | \$4.00 per
consumer per
occurrence
per day |

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- 4.8.6** The maximum financial penalty the Department may impose in any instance in which it issues an SOD shall be \$6,000.
- 4.8.7** The minimum penalty for operation of an assisted living program without a license is \$500 per day.
- 4.8.8** Any provider unable to immediately pay penalties may within thirty (30) calendar days from receipt of notification of penalty assessment apply to the Department for a delay in payment or installment payments or, in certain circumstances, to have the penalty reduced.

- 4.8.8.1** In order to have the payment delayed or paid in installments, a provider must supply sufficient information to the Department to demonstrate that immediate full payment of the total amount due would result in the interruption of the provision of necessary services to consumers.
- 4.8.8.2** In order to have a fine reduced, a provider must supply sufficient information to the Department to demonstrate that payment in full would result in a permanent interruption in the provision of necessary services to consumers.

The Department has the authority to determine whether the provider has supplied sufficient information.

4.9 Other sanctions for failure to comply.

- 4.9.1** When an applicant fails to comply with applicable laws and regulations, the Department may refuse to issue or renew a license to operate an assisted living program
- 4.9.2** If, at the expiration of a full or Provisional license, or during the term of a full license, the provider fails to comply with applicable laws and regulations, and, in the judgment of the Commissioner, the best interest of the public would be served, the Department may issue a Conditional license, or change a full license to a Conditional license. Failure by the licensee to meet the conditions specified by the Department shall permit the Department to void the Conditional license or refuse to issue a full license. The conditional license shall be void when the Department has delivered in hand or by certified mail a written notice to the licensee, or, if the licensee cannot be reached for service in hand or by certified mail, has left written notice thereof at the agency or facility. For the purposes of this subsection the term “licensee” means the person, firm, or corporation or association to whom a conditional license has been issued.
- 4.9.3** Upon investigation, whenever conditions are found which, in the opinion of the Department, immediately endanger the health or safety of the persons living in or attending the assisted living services program, the Department may request that the District Court suspend the license on an emergency basis, pursuant to Title 4 M.R.S.A. § 184, subsection 6.

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- 4.9.4** Any license may be suspended or revoked for violation of applicable laws or regulations, committing, permitting, aiding or abetting any illegal practices in the operation of the assisted living program, or conduct or practices detrimental to the welfare of persons living in or attending the assisted living program. When the Department believes a license should be suspended or revoked, it shall file a complaint with the District Court as provided in the Maine Administrative Procedures Act, Title 5 M.R.S.A. Chapter 375 § 10051.
- 4.9.5** Pursuant to Title 22 M.R.S.A. § 7931 et. seq., the Department may petition the Superior Court to appoint a receiver to operate the assisted living program in the following circumstances:
- 4.9.5.1** When the assisted living program intends to close, but has not arranged for the orderly transfer of its consumers at least thirty (30) calendar days prior to closure;
- 4.9.5.2** When an emergency exists which threatens the health, security or welfare of consumers or
- 4.9.5.3** When the assisted living program is in substantial or habitual violation of the standards of health, safety or consumer care established under State or Federal laws and regulations, to the detriment of the welfare of the consumers.
- 4.10** **Appeal rights.** Any assisted living program aggrieved by the Department’s decision to take any of the following actions, or to impose any of the following sanctions, may request an administrative hearing to refute the basis of the Department’s decision, as provided by the Maine Administrative Procedures Act, Title 5 M.R.S.A. § 9051 et. seq. Administrative hearings will be held in conformity with the Department’s Administrative Hearing Regulations. A request for a hearing must be made, in writing, to the Director of Assisted Living Licensing Services, and must specify the reason for the appeal. Any request must be submitted within ten (10) working days from receipt of the Department’s decision to:
- 4.10.1** Issue a conditional license;
- 4.10.2** Amend or modify a license;
- 4.10.3** Void a conditional license;
- 4.10.4** Refuse to issue or renew a full license;
- 4.10.5** Refuse to issue a provisional license;
- 4.10.6** Stop or limit admissions;
- 4.10.7** Issue a directed POC;
- 4.10.8** Affirm or modify an Assessment of Penalties after an informal review;

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4.10.9 Deny an application to reduce the amount or delay the payment of a penalty; or

4.10.10 Deny a request for a waiver of a rule.

5 CONSUMER RIGHTS

5.1 Consumer rights. The assisted living program shall promote and encourage consumers to exercise their rights, to age in place and make informed choices. *[Class IV]*

5.2 Freedom of choice of provider. For services and supplies not provided by the licensee, each consumer has the right to select the provider of his/her choice. *[Class IV]*

5.3 Rights regarding transfer and discharge. Each consumer has the right to continued residence whenever a valid contract for services is in force. The assisted living program must show documented evidence of strategies used to prevent involuntary transfers or discharges. A consumer shall not be transferred or discharged involuntarily, except for the following reasons:

5.3.1 When there is documented evidence that a consumer has violated the admission contract obligations, despite reasonable attempts at problem resolution; *[Class IV]*

5.3.2 A consumer's continued tenancy constitutes a direct threat to the health or safety of others; *[Class IV]*

5.3.3 A consumer's intentional behavior has resulted in substantial physical damage to the property of the assisted living program or others residing in or working there; *[Class IV]*

5.3.4 A consumer has not paid for his/her services in accordance with the contract between the assisted living program and the consumer; *[Class IV]*

5.3.5 When there is documented evidence that the assisted living program cannot meet the needs of the consumer as the program is fundamentally designed; *[Class IV]* or

5.3.6 The license has been revoked, not renewed, or voluntarily surrendered. *[Class IV]*

5.4 Transfer or discharge. When a consumer is transferred or discharged in a non-emergency situation, the consumer or his/her guardian shall be provided with at least fifteen (15) days advance written notice to ensure adequate time to find an alternative placement that is safe and appropriate. The provider has an affirmative responsibility to assist in the transfer or discharge process and to produce a safe and orderly discharge plan. If no discharge plan is possible, then no involuntary non-emergency discharge shall occur until a safe discharge plan is in place. Appropriate information, including copies of pertinent records, shall be transferred with a consumer to a new placement. *[Class IV]* Each notice must be written and include the following:

5.4.1 The reason for the transfer or discharge, including events which are the basis for such action; *[Class IV]*

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- 5.4.2** The effective date of the transfer or discharge; *[Class IV]*
- 5.4.3** Notice of the consumer's right to appeal the transfer or discharge as set forth in Section 5.28; *[Class IV]*
- 5.4.4** The mailing address and toll-free telephone number of the Long Term Care Ombudsman Program; *[Class IV]*
- 5.4.5** In the case of consumers with developmental disabilities or mental illness, the mailing address and telephone number of the Office of Advocacy, Department of Behavioral and Developmental Services; *[Class IV]*
- 5.4.6** The consumer's right to be represented by himself/herself or by legal counsel, a relative, friend, or other spokesperson. *[Class IV]*
- 5.5** **Emergency transfer or discharge.** When an emergency situation exists, no written notice is required, but such notice as is practical under the circumstance shall be given to the consumer and/or consumer's representative. The assisted living program shall assist the consumer and authorized representatives in locating an appropriate placement. Transfer to an acute hospital is not considered a placement and the obligation in regard to such assistance does not necessarily terminate. *[Class IV]*
- 5.6** **Leaves of absence.** When a consumer is away, and continues to pay for services in accordance with the contract, the consumer shall be permitted to return unless any of the reasons set forth in Section 5.4 are present and the consumer or consumer's legal representative has been given notice as may be required in these regulations. *[Class IV]*
- 5.7** **Assistance in finding alternative placement.** Consumers who choose to relocate shall be offered assistance in doing so.
- 5.7.1** Assisted living programs may require up to a fifteen (15) calendar day notice for consumers choosing to relocate in order to obtain a refund. For those consumers who relocate for emergency medical treatment no advance notice is required to obtain a refund.
- 5.7.2** The assisted living program shall offer information to the consumer, as appropriate, regarding potential risks that may be inherent in the discharge plan and information that will support the consumer's adjustment to his/her next setting. *[Class IV]*
- 5.8** **Right to communicate grievances and recommend changes.** The assisted living program shall assist and encourage consumers to exercise their rights as consumers and citizens. Consumers may freely communicate grievances and recommend changes in policies and services to the assisted living program and to outside representatives of their choice, without restraint, interference, coercion, discrimination or reprisal. All grievances shall be documented. Assisted living programs shall establish and implement a procedure for the timely review and disposition of grievances. The procedure shall include a written response to the grievant describing disposition of the complaint. These documents shall be maintained and available for review upon request by the Department. *[Class IV]*

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- 5.9 Right to manage financial affairs.** Consumers shall manage their own financial affairs, unless there is a representative payee, other legal representative appointed or other person designated by the consumer. *[Class IV]*
- 5.10 Right to freedom from abuse, neglect or exploitation.** Consumers shall be free from mental, verbal, physical and/or sexual abuse, neglect and exploitation. *[Class I, II, III, IV]*
- 5.11 Rights regarding restraints and aversive conditioning.** There shall be no use of physical, chemical, psychological or mechanical restraints or aversive conditioning, except in accordance with this section. *[Class I, II, III, IV]*
- 5.11.1** Full-length bedrails on both sides of the bed are considered restraints and shall not be attached to the bed. Half-length bedrails attached to the top half of the bed are permissible. One full-length bed rail and one half-length bed rail may be used if the full-length rail is on the side against the wall. *[Class I, II, III, IV]*
- 5.11.2** In the case of a person with mental retardation, the provider must comply with the requirements of the *Regulations Governing the Use of Behavioral Procedures in Maine Programs Serving Persons with Mental Retardation* and the *Regulations Governing the Use of Restraints in Community Settings*. These regulations are promulgated and enforced by the Department of Behavioral and Developmental Services. *[Class I, II, III, IV]*
- 5.11.3** For any consumer who is a client of the Department of Behavioral and Development Services due to his/her mental illness, the assisted living program shall comply with the *Rights of Recipients of Mental Health Services*, promulgated and enforced by the Department of Behavioral and Development Services. *[Class I, II, III, IV]*
- 5.12 Right to confidentiality.** Consumers' records and information pertaining to their personal, medical and mental health status is confidential. Consumers and their legal representatives shall have access to all records pertaining to the consumer at reasonable times, in the presence of the provider or his/her representative, within one (1) business day of the request. Consumers and their legal representatives are entitled to have copies made of their record within one (1) business day of the request. The licensee and employees shall have access to confidential information about each consumer only to the extent needed to carry out the requirements of the licensing regulations or as authorized by any other applicable state or federal law. The written consent of the consumer or his/her legal representative shall be required for release of information to any other person except authorized representatives of the Department or the Long Term Care Ombudsman Program. The Department shall have access to these records for determining compliance with these regulations. Records shall not be removed from the assisted living program, except as may be necessary to carry out these regulations. Upon admission, each consumer shall sign and date a written consent which lists individuals, groups, or categories of individuals with whom the program may share information (e.g., sons, daughters, children, family members or duly authorized licensed practitioners, etc.). A written consent to release of information meeting the requirements of Section 9.5 shall be renewed and time dated every thirty (30) months, pursuant to 22 M.R.S.A. §1711-C (4). Consent may be withdrawn at any time. *[Class IV]*

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- 5.13 Right to refuse to perform services for the assisted living program.** Consumers may refuse to perform services for the assisted living program. *[Class IV]*
- 5.14 Right to privacy and consideration.** Consumers shall be treated with respect. Residents shall also be treated with respect and consideration with regard to their individual need for privacy when receiving personal care or treatment, preferred mode of language and communication. *[Class IV]*
- 5.15 Right to communicate privately with persons of choice.** Consumers may associate and communicate privately with persons of their choice at any time, unless to do so would infringe on the rights of others. They may receive personal mail, unopened, and shall be assisted when necessary with writing and mailing letters and making phone calls. Consumers shall have privacy when having telephone conversations. *[Class IV]*
- 5.16 Right to participate in activities of choice.** Consumers may participate in social, political, religious and community activities, unless to do so would infringe on the rights of others. *[Class IV]*
- 5.17 Right to personal clothing and possessions.** Consumers may retain and use their personal clothing and possessions as space permits, unless to do so would infringe upon the rights of other consumers or impair the provider's ability to meet the purpose of these rules. *[Class IV]*
- 5.18 Couples.** A couple residing in an assisted living program has the right to share a unit. *[Class IV]*
- 5.19 Right to be informed of services provided by the facility/program.** Consumers shall be fully informed of items or services which are included in the rate they pay. This rate shall include the cost of repair or replacement of items damaged by normal wear and tear. *[Class IV]*
- 5.20 Right to refuse treatment or services.** Consumers may choose to refuse medications, treatments or services. If the consumer refuses necessary care or treatment, the provider shall make reasonable efforts to consult the consumer's duly authorized licensed practitioner, caseworker or other appropriate individuals in order to encourage consumers to receive necessary services. No person without legal authority to do so shall order treatment which has not been consented to by a competent consumer. *[Class IV]*
- 5.21 Right to be free from discrimination.** A consumer shall be provided services without regard to race, age, national origin, religion, disability, gender or sexual orientation. *[Class IV]*
- 5.22 Right to information regarding deficiencies.** Consumers have the right to be fully informed of findings of the most recent survey conducted by the Department. The provider shall inform consumers or their legal representatives that the survey results are public information and are available in a common area of the building. Consumers and their legal representatives shall be notified by the provider of any actions proposed or taken against the license of the assisted living program by the Department, including but not limited to, Directed Plans of Correction, decisions to issue a Conditional license, refusal to renew a license, appointment of a receiver or decisions to impose fines or other sanctions. This notification shall take place within fifteen (15) working days from receipt of notice of action. *[Class IV]*

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- 5.23 Notification of rights.** The provider shall inform each consumer and legal representative prior to or at admission or within thirty (30) calendar days of any changes to Section 5 of these rights and shall provide them with a copy thereof. The provider must accommodate for any communication barriers that may exist, to ensure that each consumer is fully informed of his/her rights. *[Class IV]*
- 5.24 Bill of rights for persons with mental retardation.** Programs serving persons with mental retardation shall post and comply with the *Bill of Rights for Persons with Mental Retardation*, Title 34-B M.R.S.A. § 5601 et. seq. *[Class IV]*
- 5.25 Mandatory report of rights violations.** Any person or professional who provides health care, social services or mental health services or who administers a long term care facility or program who believes that the regulations pertaining to consumers' rights or the conduct of consumer are have been violated, shall report the alleged violation to the Department of Human Services ((800) 383-2441) and to one or more of the following:
- Disability Rights Center (DRC), pursuant to Title 5 M.R.S.A. § 19501 through § 19508 for incidents involving persons with mental illness; the Long Term Care Ombudsman Program, pursuant to Title 22 M.R.S.A. § 5107-A for incidents involving elderly persons; the Office of Advocacy, pursuant to Title 34-B M.R.S.A. § 1205 for incidents involving persons with mental retardation; or Adult Protective Services, pursuant to Title 22 M.R.S.A. § 3470 through § 3487.
- Reporting suspected abuse, neglect and exploitation is mandatory in all cases. Documentation shall be maintained at the assisted living program that a report has been made.
- Mandated reporters shall contact the Department of Human Services ((800) 383-2441) within one (1) working day of receiving and/or obtaining information about any rights violations. *[Class IV]*
- 5.26 Reasonable modifications and accommodations.** To afford individuals with disabilities the opportunity to reside in an assisted living program, the licensee shall:
- 5.26.1** Permit directly, or through an agreement with the property owner, if the property owner is a separate entity, reasonable modification of the existing premises, at the expense of the disabled individual or other willing payer. Where it is reasonable to do so, the provider may require the disabled individual to return the premises to the condition that existed before the modification, upon discharge of that individual. Neither the provider nor the property owner, if a separate entity, is required to make the modification at his/her own expense, if it imposes a financial burden. *[Class IV]*
- 5.26.2** Make reasonable accommodation in regulations, policies, practices or services, including permitting reasonable supplementary services to be brought into the building. The provider is not required to make the accommodation, if it imposes an undue financial burden or results in a fundamental change in the program. *[Class IV]*
- 5.27 Right of action.** In addition to any remedies contained herein, any consumer whose rights have been violated may commence a civil action in Superior Court for injunctive and declaratory relief pursuant to Title 22 M.R.S.A. § 7948 et. seq. *[Class IV]*

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- 5.28 Right to appeal an involuntary transfer or discharge.** The consumer has the right to an expedited administrative hearing to appeal an involuntary transfer or discharge. A consumer may not appeal a discharge due to the impending closure of the program unless he/she believes the transfer or discharge is not safe or appropriate. To file an appeal regarding an involuntary transfer or discharge, the consumer must submit the appeal within five (5) calendar days of receipt of a written notice. If the consumer has already been discharged on an emergency basis, the provider shall hold a space available for the consumer pending receipt of an administrative decision. Requests for appeals shall be submitted to Assisted Living Licensing Services for submission to the Office of Administrative Hearings, 11 State House Station, Augusta, Maine 04333-0011. The provider is responsible for defending its decision to transfer or discharge the consumer at the administrative hearing. *[Class IV]*
- 5.29 Consumer adjudicated incompetent.** In the case of a consumer adjudicated incompetent, the rights of the consumer are exercised by the consumer's legal representative, as defined in Section 2.28 of these Regulations. *[Class IV]*
- 5.30 Consumer councils**
- 5.30.1** Consumers have the right to establish a consumer council, pursuant to Title 22 M.R.S.A. § 7923. Consumers and their families shall be notified of this right, orally and in writing, within the first month after admission, in a manner understood by each consumer and by a notice of the right to form a council being posted prominently in a public area.
- 5.30.2** If a majority of the consumers choose not to establish a council, they shall be given the opportunity to choose otherwise at least once each year thereafter.
- 5.30.3** The council has the following rights:
- 5.30.3.1** To be provided with a copy of the program's policies and procedures relating to consumer rights and to make recommendations to the administrator on how they may be improved; *[Class IV]*
- 5.30.3.2** To establish procedures that will ensure that all consumers are informed about and understand their rights; *[Class IV]*
- 5.30.3.3** To elicit and disseminate information regarding programs and to make recommendations for improvement; *[Class IV]*
- 5.30.3.4** To help identify consumer problems and recommend ways to ensure early resolution; *[Class IV]*
- 5.30.3.5** To inform the administrator of the opinions and concerns of the consumers; *[Class IV]*
- 5.30.3.6** To find ways of involving the families and consumers of the assisted living program; *[Class IV]*

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5.30.3.7 To notify the Department and The Long Term Care Ombudsman Program when the council is constituted; and *[Class IV]*

5.30.3.8 To disseminate records of council meetings and decisions to the consumers and the administrator and to make these records available to family members or their designated representatives and the Department, upon request. *[Class IV]*

5.31 Right to a service plan. The provider shall assist consumers to implement any reasonable plan of service developed with community or state agencies. *[Class IV]*

6 ALZHEIMERS'/DEMENTIA UNIT STANDARDS

6.1 Alzheimers'/Dementia Care Units. A building or unit may be designated as an Alzheimers'/Dementia Care Unit if the following regulations are met and the assisted living program has received written designation from the Department.

6.2 Admission requirements.

6.2.1 At the time of admission to an Alzheimer's/Dementia unit, the consumer's individual record must contain:

6.2.1.1 Documentation of the legal representative's authority for placement, including but not limited to, the order, instrument or other documentation upon which the legal representative or assisted living program relies upon for authority, the name, address and telephone number of the individual(s) consenting to placement, and all other documentation required by State and Federal law for valid authority.

6.2.1.2 Documentation of a physician's diagnosis of Alzheimer's disease or dementia within 30 days of admission to the unit.

6.3 Design standards. The unit shall be designed to accommodate consumers with dementia, enhance their quality of life, and promote their safety.

6.3.1 Physical design. In addition to any physical plant standards required for the licensure, an Alzheimer's/dementia care unit shall have;

6.3.1.1 Adequate space for dining, group and individual activities and family visits;

6.3.1.2 Secured outdoor space and walkways, which allow consumers to ambulate but prevent undetected egress;

6.3.1.3 High visual contrasts between floors and walls and doorways and walls in consumer use areas. Other doors used as fire exits and access ways may be

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designed to minimize contrast to obscure or conceal areas the consumer should not enter;

6.3.1.4 Non-reflective floors, walls and ceilings;

6.3.1.5 Adequate and even lighting which minimizes glare and shadows; and

6.3.1.6 A staff work area for charting and storage of consumer records, and a communication system such as a telephone or two-way voice actuated call system.

6.3.2 **Physical environment.** The designated Alzheimer's/dementia care unit shall:

6.3.2.1 Provide freedom of movement for the consumers between common areas and his/her room;

6.3.2.2 Provide assistive equipment that maximizes the independence of individual consumers;

6.3.2.3 Label or inventory all consumer possessions;

6.3.2.4 Provide comfortable, non-institutional seating in the common use areas;

6.3.2.5 Encourage consumers to decorate and furnish their units with personal items and furnishings, as appropriate;

6.3.2.6 Individually identify consumer's units as appropriate; and

6.3.2.7 Only use a public address system in the unit (if one exists) for emergencies.

6.3.3 **Physical Safety.**

6.3.3.1 The designated Alzheimer's/dementia care unit shall have policies and procedures regarding consumers who may wander. The procedures shall include actions to be taken in case a consumer elopes.

6.3.3.2 If locking devices are used on doors that exit the unit, as approved by the building codes agency and the Office of the State Fire Marshal having jurisdiction over the assisted living program, then the locking device shall be electronic and will automatically release when the following occurs:

6.3.3.2.1 Upon activation of the fire alarm or sprinkler system;

6.3.3.2.2 Power failure; or

6.3.3.2.3 Bypassing a key button/key pad located at exits for routine use by staff for service.

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- 6.3.3.3** If the unit uses keypads to lock and unlock doors exiting from the unit, then directions for access to the unit shall be posted on the outside of the door.
- 6.3.3.4** The units shall not have entrance and exit doors that are closed with non-electric keyed locks, nor shall a door with a keyed lock be placed between a consumer and the exit.

6.4 Therapeutic activities for Alzheimer's/Dementia Care Units. All facilities with Alzheimer's/Dementia Care Units shall offer the following types of individual or group activities at least weekly:

- 6.4.1** Gross motor activities (e.g., exercise, dancing, gardening, cooking, etc.);
- 6.4.2** Self-care activities (e.g., dressing, personal hygiene/grooming, etc.);
- 6.4.3** Social activities (e.g., games, music, reminiscing, etc.);
- 6.4.4** Crafts (e.g., decorations, pictures, etc.);
- 6.4.5** Sensory enhancement activities (e.g., auditory, visual, olfactory and tactile stimulations, etc.);
- 6.4.6** Outdoor activities (e.g., walking outdoors, field trips, etc.); and
- 6.4.7** Spiritual activities.

6.5 Pre-service training for Alzheimer's/Dementia Care Units. For pre-service training, all facilities with Alzheimer's/Dementia Care Units must provide a minimum of eight (8) hours classroom orientation and eight (8) hours of clinical orientation to all new employees assigned to the unit. The trainer(s) shall be qualified with experience and knowledge in the care of individuals with Alzheimer's disease and other dementias. In addition to the usual assisted living program orientation, which shall cover such topics as consumer rights, confidentiality, emergency procedures, infection control, assisted living program philosophy related to Alzheimer's Disease/dementia care, and wandering/egress control, the eight (8) hours of classroom orientation shall include the following topics:

- 6.5.1** A general overview of Alzheimer's Disease and related dementias;
- 6.5.2** Communication basics;
- 6.5.3** Creating a therapeutic environment;
- 6.5.4** Activity focused care;
- 6.5.5** Dealing with difficult behaviors; and
- 6.5.6** Family issues.

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7 MEDICATIONS AND TREATMENTS

7.1 Use of safe and acceptable procedures. The administrator shall ensure that all persons administering medications and treatments (except consumers who self-administer) use safe and acceptable methods and procedures for ordering, receiving, storing, administering, documentation, packaging, discontinuing, returning for credit and/or destroying of medications and biologicals. All employees must practice proper hand washing and aseptic techniques. A hand-washing sink shall be available for staff administering medications. *[Classes I/II/III]*

7.1.1 Consumers shall receive only the medications ordered by his/her duly authorized licensed practitioner in the correct dose, at the correct time, and by the correct route of administration consistent with pharmaceutical standards. *[Classes I/II/III]*

7.1.2 No injectable medications may be administered by an unlicensed person, with the exception of bee sting kits and insulin.

7.1.3 Before using a bee sting kit, unlicensed persons must be trained by a registered professional nurse in regard to the safe and proper use of the kit. Documentation of training shall be included in the employee record.

7.1.4 If a consumer has Diabetes, unlicensed persons must be trained by a registered professional nurse in regard to the management of persons with diabetes. The registered professional nurse must provide in-service training and documentation to include: Documentation of training shall be included in the employee record *[Class III]*.

7.1.4.1 Dietary requirements;

7.1.4.2 Anti-Diabetic Oral Medications – inclusive of adverse reactions and interventions, hyper and hypo glycemic reactions;

7.1.4.3 Insulin mixing including insulin action;

7.1.4.4 Insulin storage;

7.1.4.5 Injection techniques and site rotation including signs/symptoms;

7.1.4.6 Treatment and prevention of insulin reaction;

7.1.4.7 Foot care;

7.1.4.8 Lab testing, urine testing and blood glucose monitoring; and

7.1.4.9 Standard Precautions.

7.1.5 Urine testing shall not be done around medication or areas where food is stored or prepared. Proper Standard Precautions relative to body fluids shall be implemented. Toilets shall be used for the disposal of urine and test sample waste. Toxic urine testing

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chemicals (tablets, solutions) shall be stored in a locked area totally apart from oral medications.

7.1.6 For those residents for whom the facility is responsible for assistance with medication administration, no medications, including those brought into the assisted living program by the consumer, family or friends, shall be administered or discontinued without a written order signed by a duly authorized licensed practitioner or other person licensed to prescribe medications. *[Class III]*

7.1.7 Orders for medications and associated treatments shall be in writing, signed and dated by a duly authorized licensed practitioner and shall be in effect for the time specified by the duly authorized licensed practitioner, but in no case to exceed twelve (12) months, unless there is a written reorder. Orders for psychotropic medications shall be reissued every three (3) months, unless otherwise indicated by the duly authorized licensed practitioner. Standing orders for individual consumers are acceptable when signed and dated by the duly authorized licensed practitioner.

7.2 Administration of medications.

7.2.1 Self-administration. Upon admission, each individual's ability to self-administer medications will be determined by an assessment of his/her ability or need for assistance, unless the consumer/legal representative elects (in writing) to have the assisted living program administer his/her medications. A final decision will be reached between the consumer his/her legal representative his/her duly authorized licensed practitioner and a facility representative.

7.2.2 Medications administered by assisted living program. For those medications for which the assisted living program is responsible, the following apply:

7.2.2.1 Telephone orders shall be accepted only by a registered or licensed nurse or pharmacist. Written dated orders for telephone orders must be signed by the duly authorized licensed practitioner within five (5) working days. *[Class III]*

7.2.2.2 Facsimile orders are acceptable legal orders as long as they are in compliance with the Commission on Pharmacy regulations.

7.2.3 Unlicensed assistive personnel. Except for individuals who are already Certified Nurse Aid – Medications (CNA-M's), unlicensed assistive personnel administering medications and/or treatments must successfully complete training approved by the Department. There shall be evidence available in the assisted living program that such training has been successfully completed. Whenever the standards or guidelines of the medication administration course are substantially revised, unlicensed personnel must be re-certified within one (1) year of the revision, by a method approved by the Department. An additional exception will be made on a case-by-case basis for persons who only administer dietary supplements and/or minor medicated treatments, shampoos, lotions and creams that could be obtained over the counter without a physician's order. Any person who is certified as a CNA-M may administer medications and/or treatments.

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A person qualified to administer medications must be on site at the assisted living program whenever a resident(s) have medications prescribed “as needed” (PRN) if this medication is not self-administered.

All unlicensed assistive personnel administering medications and/or treatments must complete a Department-approved eight (8) hour refresher course biennially for re-certification within two (2) years of the original certification. *[Class III]*

By January 1, 2004, all persons who have not taken a state approved course and have not received a Certified Residential Medication Aide certificate, must do so in order to pass medications in Assisted Living Programs.

7.2.4 PRN Medications

7.2.4.1 PRN Psychotropic medications. Psychotropic medications ordered "as needed" by the duly authorized licensed practitioner, shall not be administered unless the duly authorized licensed practitioner has provided detailed behavior-specific written instructions, including symptoms that might require use of medication, exact dosage, exact time frames between dosages and the maximum dosage to be given in a twenty-four (24) hour period. Assisted living program staff shall notify the duly authorized licensed practitioner within twenty-four (24) hours when such a medication has been administered, unless otherwise instructed in writing by the duly authorized licensed practitioner.

7.2.4.2 A person qualified to administer medications must be on site at the assisted living program whenever a resident(s) have medications prescribed “as needed” (PRN) if this medication is not self-administered.

In no event, however, shall antipsychotic-type psychotropic medications be prescribed on a PRN basis only, having no routinely scheduled and administered doses.

7.3 Medication storage.

7.3.1 Consumers who self-administer medications and who handle their own medical regime may keep medications in their own apartment. *[Class III]*

7.3.2 Medications administered by the assisted living program shall be kept in their original containers in a locked storage cabinet. The cabinet shall be equipped with separate cubicles, plainly labeled, or with other physical separation for the storage of each consumer’s medications. It shall be locked when not in use and the key carried by the person on duty in charge of medication administration. *[Class III]*

7.3.3 Medications/treatments administered by the assisted living program for external use only shall be kept separate from any medications to be taken internally. *[Class III]*

7.3.4 Medications administered by the assisted living program which require refrigeration shall be kept safely stored and separate from food by placement in a special tray or container, except vaccines, which must be stored in a separate refrigeration unit that is not used to store food. Refrigeration shall be between thirty-five (35) degrees and forty (41) degrees Fahrenheit. A thermometer shall be used to ensure proper refrigeration. *[Class III]*

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- 7.4 Temporary absences.** When a temporary absence from the assisted living program is expected to be greater than seventy-two (72) hours, medications leaving the assisted living program (except those by consumers who self-administer) must be in a form packaged and labeled by a pharmacist. For medications leaving the assisted living program for seventy-two (72) hours or less, the medication shall be packaged in such a way as to facilitate self-administration or administration by a responsible party of the correct medication at the appropriate time. Properly certified or licensed staff will use acceptable methods and procedures for preparing medications for leaving the assisted living program. Staff will follow the same policies used in the assisted living program for administering medications. The name of the consumer and the name and strength of each drug, as well as the directions from the original prescription package, should be conveyed to the consumer or their responsible party along with all cautionary information in writing, either directly on an envelope containing the appropriate dose or on a separate instruction sheet. If the medication is sent in original containers, pills must be counted and documented upon leaving and returning to the assisted living program. *[Class III]*
- 7.5 Medication labeling.** For medications administered by the assisted living program, each prescription dispensed by a pharmacy shall be clearly labeled in compliance with requirements of the Commission on Pharmacy and shall include at least the following:
- 7.5.1** Prescription number;
 - 7.5.2** Consumer's full name;
 - 7.5.3** Name, strength and dosage of the drug;
 - 7.5.4** Directions for use;
 - 7.5.5** Name of prescribing duly authorized licensed practitioner;
 - 7.5.6** Name and address of issuing pharmacy;
 - 7.5.7** Date of issue of latest refill;
 - 7.5.8** Expiration date; and
 - 7.5.9** Appropriate accessory and cautionary instructions.
- 7.6 Improperly labeled medications.** For medications administered by the assisted living program, all pharmaceutical containers having soiled, damaged, incomplete, incorrect, illegible or makeshift labels shall be returned to the original dispensing pharmacy for re-labeling within two (2) working days or shall be disposed of in accordance with the requirements contained in Section 7.9. *[Class III]*
- 7.7 Expired and discontinued medications.** For medications administered by the assisted living program, medications shall be removed from use and properly destroyed after the expiration date and when discontinued according to procedures contained in Section 7.9. They shall be taken out of service, taped shut and locked separately from other medications until reordered or destroyed. *[III]*

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- 7.8 Medication owned by consumers.** Prescribed medicines are the property of the consumer and shall not be given to or taken by other consumers or any other person.
- 7.9 Destroying medications.** For medications administered by the assisted living program, all discontinued medications, expired medications or medications prescribed for a deceased consumer, except controlled substances and individual doses, shall be destroyed by the administrator or the administrator's designee and witnessed by one (1) competent person who is not a consumer. The destruction shall be conducted so that no person can use, administer, sell or give away the medication. Individual unit doses may be returned to the pharmacist and a credit or rebate made to the person(s) who originally paid for the medication. Amounts destroyed or returned shall be recorded on the consumer's record, with the signature of the administrator or the administrator's designee and witness(es). Destruction or return to the pharmacy shall take place within thirty (30) calendar days of expiration or discontinuation of a medication or following the death of the consumer.
- 7.10 Schedule II controlled substances.** All Schedule II controlled substances administered by the assisted living program, listed in the Comprehensive Drug Abuse Act of 1970, Public Law 91-513, Section 202 and as amended pursuant to Section 202 are subject to the following standards *[Class II]*
- 7.10.1** For all Schedule II controlled substances, there shall be an individual record in which shall be recorded the name of the consumer, prescription number, the date, drug name, dosage, frequency and method of administration, the signature of the person administering it and verification of the balance on hand. *[Class II]*
- 7.10.2** There shall be a recorded and signed count of all Schedule II controlled substances at least once a day, if such substances have been used in the assisted living program that day. *[Class II]*
- 7.10.3** All Schedule II controlled substances on hand shall be counted at least weekly and records kept of the inventory in a bound book with numbered pages, from which no pages shall be removed. *[Class II]*
- 7.10.4** All Schedule II controlled substances shall be stored under double lock in a separate locked box or cabinet within the medication cabinet or in an approved double-locked cabinet attached to the wall. *[Class II]*
- 7.10.5** All excess and undesired Schedule II controlled substances in the possession of a licensed assisted living program that are no longer required for a consumer, shall be disposed of in the following manner. The Administrator or a licensed or registered nurse shall list all such unused substances, tape the cap or cover of the container securely and keep the same in a securely locked area apart from all other drugs. Disposal shall be in the form of incineration or flushing into the sewage system only in the presence of an authorized representative of the Department, a licensed pharmacist, a member of the Commission on Pharmacy or an authorized representative of the Drug Enforcement Agency. At least one (1) of the persons must be a person who did not dispense the drug or who was the last person to inventory the drug. Documentation of such destruction shall be made on the consumer's record and in the inventory record required in Section 7.10.3, signed by the individual authorized to dispose of the drug. *[Class II]*

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- 7.11 Bulk supplies.** Assisted Living Programs may, but are not required to, stock in bulk supply those items regularly available without prescription at a pharmacy.
- 7.12 Medication/treatment administration records** for medications administered by the assisted living program,
- 7.12.1** Individual medication/treatment administration records shall be maintained for each consumer and shall include all treatments and medications ordered by the duly authorized licensed practitioner. The name of the medication, dosage, route and time to be given shall be recorded in the medication/treatment administration record. Documentation of treatments ordered and time to be done shall be maintained in the same manner. These rules apply only to treatments ordered by licensed health care professionals. *[Class III]*
- 7.12.2** Whenever a medication or treatment is started, given, refused or discontinued, including those ordered to be administered as needed (PRN), the medication or treatment shall be documented on the medication/treatment administration record. It shall be initialed by the administering individual, with the full signature of the individual written somewhere on such record. A medication or treatment shall not be discontinued without evidence of a stop order signed and dated by the duly authorized licensed practitioner. *[Class III]*
- 7.12.3** Medication errors and reactions shall be recorded in an incident report in the consumer's record. Medication errors include errors of omission, as well as errors of commission. Errors in documentation or charting are errors of omission. *[Class II]*
- 7.12.4** Administration of medications ordered as needed (PRN) shall be documented and shall include date, time given, medication and dosage, route, reason given, results or response and initials or signature of administering individual. Treatments ordered PRN shall be documented in the same manner.
- 7.13 Medication containers.** Graduated medicine containers, for the accurate measurement of liquid medications, shall be used. If not disposable, medicine containers shall be returned to the dishwashing unit for sanitization after each use. Only sterile disposable syringes and needles shall be used for insulin injection. Disposable medicine containers shall not be reused. *[Class III]*
- 7.14 Breathing apparatus.** When the assisted living program assists a consumer with a hand-held bronchodilator, metered dose nebulizers, intermittent positive pressure breathing machine or oxygen machine, there shall be documentation of the following:
- 7.14.1** The names of staff who are qualified or trained to use the equipment and/or to mix medications, the nature of their training, the date and who provided it;
- 7.14.2** The name of the distributing agency and the frequency and specific directions for cleaning the equipment; and
- 7.14.3** The consumer's record shall contain a copy of the duly authorized licensed practitioner's order, possible side effects to be monitored, specific instructions as to when the duly authorized licensed practitioner must be notified regarding side effects and instructions to the consumer on the use of the breathing apparatus.

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- 7.15** Whenever a Registered Nurse teaches or provides in-service training to unlicensed personnel on medical issues, treatments and/or use of medical equipment not specifically outlined in these regulations there must be documentation for the employee file.

8 VERIFICATION OF CREDENTIALS

- 8.1 Licensed Staff.** Prior to employing licensed staff, the assisted living program must verify that the person has a valid and current license.
- 8.2 Employing CNA's and CNA-M's.** Prior to employing a CNA or CNA-M (in the capacity of a CNA or CNA-M), the assisted living program must contact the CNA Registry and determine that the CNA or CNA-M is on the Registry and has not been annotated. If the CNA or CNA-M is not on the Registry, or if they have been annotated for abuse, neglect or misappropriation of patient/client/consumer funds in a health care setting, the individual cannot be employed to function as a CNA or CNA-M.

9 SCOPE OF LICENSES

- 9.1 Change in level of services.** No Assisted Living Program may provide services in excess of those permitted by its license. When a licensed Type 1 Assisted Living Program applies to be licensed as a Type 2 program that provides nursing services, a modified application process is used. The provider must contact the Department in writing and provide such additional information as may be requested in order to assess the provider's capacity to deliver nursing services under a Type 2 license.

10 CONSUMER RECORDS

- 10.1 Individual records required.** For each consumer receiving assisted living services, the program must develop and maintain individual records that include, but are not limited to, the following:

- 10.1.1** Name, address, mailing address (if different) and telephone number;
- 10.1.2** Name, address and telephone number of a person to contact in an emergency;
- 10.1.3** A functional assessment and reassessments;
- 10.1.4** A service plan;
- 10.1.5** A dated release of information authorization; and
- 10.1.6** Documented proof of legal representation.

- 10.2 Assessments and reassessments.**

- 10.2.1** A functional assessment must be completed within thirty (30) calendar days for a consumer receiving assisted living services. The assessment must include a review of the

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consumer's need for assistance with ADLs, IADLs, medication administration and nursing service. The document shall contain the date of the assessment and the signature of the assessor.

10.2.2 Reassessments shall be done at least every six (6) months thereafter, indicating the date of the reassessment and the signature of the assessor.

10.3 Service plans. A service plan shall be signed by the consumer or his/her legal representative. The plan authorizes the program to arrange for or to provide services. The service plan must be reviewed and revised as appropriate, but at least every six (6) months, unless changes occur. The plan must describe:

10.3.1 What services will be provided;

10.3.2 The desired outcome;

10.3.3 Who will provide the services;

10.3.4 When and how often assistance will be provided; and

10.3.5 When the service will begin.

10.4 Release of information. A dated release of information authorization shall be on a form approved by the Department, and signed by the consumer. The release of information authorization must:

10.4.1 Be in language the consumer can understand;

10.4.2. State whether or not the consumer gives permission for information to be disclosed and if permission is given, the authorization must contain:

10.4.2.1 Names of the agencies or people who are authorized to disclose information;

10.4.2.2 A description of the type of information that may be disclosed;

10.4.2.3 Names of the people or agencies to whom information may be disclosed;

10.4.2.4 The date the authorization will expire; and

10.4.2.5 A statement that the consumer can revoke or change the release at any time.

10.5 Progress notes. Signed and dated progress notes shall be completed at least monthly on implementation of the service plan and/or any significant changes in the consumer's functioning.

10.6 Incident documentation. For any consumer who has sustained an injury, who has a medication reaction or when an error is made in the documentation or administration of medication, a report shall

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be completed. The report shall describe the incident and indicate the extent of the injury or reaction and necessary treatment. It shall be filed in the consumer's record.

11 QUALIFICATIONS, TRAINING AND RESPONSIBILITIES

- 11.1 Operating standards.** The licensee shall operate in compliance with all applicable laws and regulations, consistent with the standard of conduct that a reasonable and prudent person would observe in the same situation.
- 11.2 Minimum age.** The chief executive officer of the licensee shall be at least twenty-one (21) years of age.
- 11.3 Criteria.** The licensee and administrator shall demonstrate their willingness and ability to operate and manage the assisted living program with regard for the best interests of consumers. In making this determination, the Department shall consider each of the following factors to the extent that they are relevant to the proposed program, ownership interest and/or employment:
- 11.3.1** Record and reputation for honest and lawful conduct in business and personal situations. The provider shall, as part of the license application and renewal process, authorize the Department to review the records of professional licensing boards or registers and any criminal record, child protective record or adult protective record necessary to determine compliance with these rules.
- 11.3.2** Financial viability, including but not limited to, a history of timely payment of employee federal withholding taxes, a good credit rating from an appropriate agency and/or financial institution, capability of obtaining financing for working capital.
- 11.4 Training for Assisted Living Provider.** The licensee shall attend any training sessions that the Department determines are necessary to meet licensing standards.
- 11.5 Administrator.** There shall be an administrator who holds a current professional license related to residential care, assisted living programs or health care, or have a combination of five (5) years of education or experience in the health care field, including financial management and staff supervision. In addition, the administrator must meet the following qualifications:
- 11.5.1** The administrator shall be at least twenty-one (21) years of age.
- 11.5.2** The administrator shall have management and supervisory experience, including the capacity to manage the financial operations and staff of the assisted living program for which the license is sought.
- 11.5.3** The administrator shall have experience in the field of health care, social services or areas related to the provision of assisted living services.
- 11.5.4** The administrator shall demonstrate conduct which shows an understanding of, and compliance with, consumers' rights.

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- 11.5.5** The administrator shall provide information which relates to the ability and willingness to comply with all applicable laws and regulations.
- 11.5.6** The administrator shall provide any information reasonably related to the ability to provide safe and appropriate services at the level of care for which the license is sought.
- 11.6** **Administrator training.** The Administrator shall attend any training sessions which the Department determines to be mandatory.
- 11.7** **Direct Services staff.** No person under the age of eighteen (18) shall provide direct services except for C.N.A.s sixteen (16) or older who are acting in the capacity of a C.N.A.
- 11.8** **Employee records.** Individual employee records are required, and must contain the initial date of employment, date of birth, home address and telephone number, experience and qualifications, social security number, copy of current occupational license (if applicable), references and reference check information, job description, record of participation in in-service, orientation or other training programs, results of annual personnel evaluations, disciplinary actions, illness and injury records and date of and reason for termination. Records may be computerized.

12 SERVICES AND SERVICE COORDINATION

- 12.1 Services.** The following services must be offered:
- 12.1.1** Service coordination to identify a consumer's need and desire for services and to coordinate the appropriate types and amounts of services, as identified in the service plan. This activity is to be carried out with the involvement of the consumer, the service provider and other persons of the consumer's choice, as applicable. Service coordination includes:
- 12.1.1.1** Completing the functional assessment and reassessments;
- 12.1.1.2** Coordinating and participating in a health professional's assessment or reassessment as necessary;
- 12.1.1.3** Reviewing, with the consumer, the findings of the functional assessments, the options available to address the consumer's needs and the development of a service plan;
- 12.1.1.4** Implementation of a service plan;
- 12.1.1.5** Monitoring of the consumer's needs and services furnished, as often as necessary;
- 12.1.1.6** Advocating on behalf of the consumer; and
- 12.1.1.7** Maintaining complete and accurate consumer records.

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- 12.1.2 Housekeeping services to assist consumers with IADLs;
- 12.1.3 Assistance with ADLs;
- 12.1.4 At least one nutritious meal a day;
- 12.1.5 Chore services to assist with heavy cleaning; and
- 12.1.6 Other goods and services identified in the service plan.
- 12.2 **Additional responsibilities.** The provider must assure that:
 - 12.2.1 Administrators meet the requirements of Section 10.5 of these regulations;
 - 12.2.2 Written agreements with service providers and, if applicable, the building owner, are current and comply with the applicable laws and regulations;
 - 12.2.3 The names, addresses, telephone numbers for and descriptions of the services available from advocacy and legal assistance programs and the Long Term Care Ombudsman Program are posted conspicuously;
 - 12.2.4 The requirements of the Maine Human Rights Act, Title 5 M.R.S.A. § 4551 et. seq. are observed;
 - 12.2.5 Written admission criteria, discharge policies, complaint resolution procedures and consumer fee requirements are given to consumers at the time of application for service;
 - 12.2.6 Consumer and program records are complete, current and available for Department review;
 - 12.2.7 The site meets applicable state and/or federal regulations for handicapped accessibility;
 - 12.2.8 Licensure requirements for food safety are met; and
 - 12.2.9 Licensure requirements for building safety are met.
- 13 **DIETARY SERVICES**
 - 13.1 **Food Safety.** An Assisted Living Program site with a community kitchen must have a valid license from the Department of Human Services, Division of Health Engineering. Meals prepared off-site must be prepared by an appropriately licensed provider.
 - 13.2 **Consumer participation in meal planning.** Consumers shall be encouraged to participate in food planning.
 - 13.3 **Meals.** Food shall be served at the proper temperatures.

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- 13.4 Registered dietitian.** A registered dietitian shall be required to sign off annually on menus and menu cycles.
- 13.5 Planned menus.** Menus shall be planned in accordance with consumers' needs and preferences.
- 13.6 Therapeutic diets.** Therapeutic diets are considered treatments and shall be ordered, in writing, by a duly authorized licensed practitioner. Menus for medically prescribed therapeutic diets shall be planned, in writing, and approved by a registered dietitian.
- 13.7 Food supplies.** For Assisted Living Programs that prepare meals on-site, supplies of perishable foods for a forty-eight (48) hour period and supplies of non-perishable foods for a three (3) day period shall be on hand to meet the requirements of the planned menus.

14 PHYSICAL PLANT AND SANITATION

- 14.1 Applicable standards.** Buildings containing an Assisted Living Program must comply with all applicable local, state and federal rules and regulations regarding building safety, fire safety, handicapped accessibility and fair housing practices. When codes conflict, the higher standard shall apply.
- 14.2 Bathrooms.** Public bathrooms must be safe and sanitary.
- 14.3 Heat.** Heat needs to be available and individually controlled in each apartment.
- 14.4 Water temperature.** The hot water temperature for consumer use must be between 105°F. and 120°F. and in adequate supply.
- 14.5 Lockable door.** Each apartment must have a lockable door to common areas.
- 14.6 Food preparation area.** Each apartment must have an area for the purpose of storing and preparing food. This area must include, as a minimum, six (6) square feet of clear countertop, a small refrigerator, bar-type sink, a cabinet for food storage and either a two-burner stovetop or a microwave oven.
- 14.7 Private water supply.** A private water supply shall be tested annually and a satisfactory result obtained.
- 14.8 Garbage and rubbish.** Pending removal, all refuse collected in common areas or from consumer apartments shall be stored in cleanable, rodent-proof, covered containers.
- 14.9 Insect and rodent control.** There shall be no evidence of rodent or insect infestation. All reasonable precautions will be taken in maintaining a safe, sanitary and comfortable living environment in regards to controlling insects and rodents.
- 14.10 Poisonous and toxic materials.** When not in use, poisonous and toxic materials such as cleaning solutions, compounds and other non-food supplies, shall be stored in compartments which are used for

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no other purpose. They shall be separated from the food storage and preparation areas, clean equipment, utensil storage rooms and medication storage areas. Bactericides and cleaning compounds shall not be stored in the same cabinet or area of the room with insecticides, rodenticides or other poisonous materials. All containers must be properly labeled for identification. This section does not apply to materials belonging to consumers and stored in their apartments.

15 ASSISTED LIVING PROGRAMS WITH NURSING SERVICES (TYPE 2)

15.1 License required. Before an assisted living program can provide nursing services directly or indirectly, it must demonstrate to the Department's satisfaction the capacity to provide nursing services and receive a Type 2 Assisted Living Program license.

15.2 Nursing services. The assisted living program shall disclose whether it provides nursing services, directly or indirectly, as follows:

15.2.1 Services of a Registered Professional Nurse; and/or

15.2.2 Registered Professional Nurse coordination and oversight of consumer care services provided by unlicensed health care assistive personnel.